

Ending the Use of Virtual Shackles

A Toolkit for Advocates

November 2020



**HAYWOOD
BURNS INSTITUTE**
JUSTICE. FAIRNESS. EQUITY.

This toolkit was written as a collaboration between many partners. We hope you will join our efforts.

In October of 2019, The East Bay Community Law Center (EBCLC) partnered with Kate Weisburd, the Samuelson Law, Technology & Public Policy Clinic at UC Berkeley School of Law (Samuelson Clinic) and Communities United for Restorative Youth Justice (CURYJ) to hold the first national convening about the use of electronic monitoring in juvenile court.

The convening was attended by a diverse group of over 50 participants, including system-impacted youth, juvenile defense attorneys, researchers, journalists and community activists. A highlight of the convening was the testimony of several youth who spoke about their experiences being placed on an ankle monitor as a condition of their probation. Their stories highlighted the numerous ways in which electronic monitoring negatively impacted their lives, including leading some to homelessness and forcing others to remain in abusive homes. The clear consensus from the convening was that electronic monitoring has no place in the lives of youth who are at a crucial and sensitive point of adolescent development – and while attendees are committed to advocating for reforms along the way – the ultimate goal is to end the use of electronic monitoring in juvenile court all together.

Leading up to and following the October 2019 convening, the W. Haywood Burns Institute (BI) worked to develop this toolkit. Anna Wong, Burns Institute Senior Policy Associate, gathered the expertise of many thought partners and put our collective thoughts down on paper. The Burns Institute's work to combat racial and ethnic disparities in hundreds of jurisdictions around the country informed some of the ideas here including the decision-point analysis framework.

Thank you to BI colleagues Laura Ridolfi and Clarence Ford, Catherine Crump (Samuelson Clinic), Cancion Sotorosen (EBCLC), Kate Weisburd (George Washington University School of Law), Chaz Arnett (University of Maryland), and Angela Laureano (UC Berkeley Underground Scholars) for feedback on the report. Additional thanks to Shebani Rao, who created the illustrations.

We hope that you will join in the effort to end the use of virtual shackles on youth and invest in community-centered efforts to ensure structural well-being for our children. Please share your successes and challenges with us by contacting any of the following partners: the Burns Institute policy team (policy@burnsinstitute.org), Kate Weisburd (kweisburd@law.gwu.edu), East Bay Community Law Center (csotorosen@ebclc.org), or the Samuelson Clinic (ccrump@clinical.law.berkeley.edu).



Statement from the W. Haywood Burns Institute on Structural Well-Being and Racial Justice in 2020 and Beyond

The W. Haywood Burns Institute (BI) is a black-led national, non-profit with a diverse team of visionaries working to transform the administration of justice. Always challenging racial hierarchy and the social control of communities of color by the justice sector and other public systems, BI works to establish a community centered approach to justice administration that is anchored in structural well-being.

This community centered well-being paradigm will be operationalized by a system of public policies, institutional and inclusive practices, cultural representations, and other norms that work to strengthen families, communities and individual well-being.

As this toolkit goes to press in November 2020, we are almost a year into witnessing the devastating effects that the Coronavirus has had on our world, our country, and particularly, upon our most vulnerable populations: essential workers, particularly the undocumented, people in prison, unhoused people, and hard-working folks who can barely make rent despite living in crowded and sub-standard conditions where the virus spreads easily. All of these groups are disproportionately people of color, as are those who die from the virus at higher rates.

We are months into uprisings over the continued legalized murders of Black and Brown people – too many to name here – by law enforcement and White supremacists. We've had an election in which the 45th President continues to spread lies about the legitimacy of the results and is challenging his loss in court.

Unprecedented wildfires burned in California this year. People in prison who risked their lives to fight those fires were barred from obtaining legal employment as firefighters once they were released until California Governor Newsom signed a bill (AB 2147) in 2020, which changed this.

While outrageous, none of this is surprising to those of us who have studied our country's history, present day policies, and who have lived the impacts of structural racism. These threats to the well-being of people who bear the greatest burden of unjust treatment are modern day testimony to the enduring nature of structural racism: the way it morphs and lives on. It is in *this* context that we need to deeply examine the proliferation of electronic surveillance as a so-called "reform" in the administration of justice, which is the subject of this toolkit.

With these life and death issues on our minds each day, examining the use of ankle monitors may seem like a minor issue. However, ankle monitors are one of the many insidious ways that the administration of justice in this country appears to change, without changing anything structurally.

It should go without saying that the W. Haywood Burns Institute objects to the framing of ankle monitors as "alternatives to incarceration". BI is skeptical of tools and technologies that are proposed as advances or innovations, which in fact do not help to achieve better life outcomes for the people that are subject to them. Moreover, ankle monitors may appear to be race neutral but, as with the rest of the justice system, are overwhelmingly used to exercise control over Black and Brown bodies.

If we are truly invested in improving outcomes for youth of color and promoting equity, we should devote the resources spent on ankle monitors to instead combatting the persistent structural barriers that hinder life opportunity for people of color throughout the life span.

We should invest in community infrastructure, education, recreational activities, parks, the arts, street lights, public transportation, safe and affordable housing, access to good food, clean air and water, health care, hospitals, small businesses, job opportunities, and community organizations.

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Ankle Monitor's Hidden Toll: In Mani's Words...

As I sit beside Mani in her car, she describes her experiences as a 15-year-old foster child on an ankle monitor. Gazing out of the driver's side window, trying to fight back her tears Mani relives her experiences as a homeless child:

"I was homeless, 15 years old trying to feed myself. I was still stealing to survive. People were labeling me as a criminal when I was just trying to survive. I didn't deserve it. I was on the monitor 6-8 months. After house arrest, I was still on probation a year and a half."

Throughout our conversation, she unpacked the toll that electronic monitoring had on her mental health. She described her home and her foster parents as abusive. Mani recalls trashing her room out of frustration because home was always the last place she wanted to be. She felt like the monitor enclosed her within that abusive setting.

"I felt constant anxiety. I built up a lot of anger not being able to leave the house. I wrecked my whole room. I was frustrated. It didn't help me, didn't stop me from doing bad things, it just made me angry. It made me feel like a criminal. It is like when you put a tracking device collar on your dog. I wasn't even bad or troubled, I was just lost."

She described how it felt much worse to witness people do things that she couldn't do because at least in juvenile hall she didn't have to be tempted by that. All she was allowed to do was go to school and go home. She also described her monitor as a punishment on top of a punishment since she had already spent time incarcerated in juvenile hall.

"It's like putting candy in front of a baby and then punishing the baby for taking the candy, I'd rather be in LP (Los Padrinos Juvenile Hall in LA County) instead of having to watch everyone live their lives. I was technically still in jail, even when I got out. I was fresh out and went straight to foster care on an ankle monitor. On holidays, I couldn't even spend time with my own real family. I ended up missing birthday parties. I could practice for my basketball games, but I couldn't play. My coach said my ankle monitor was a safety hazard."

Introduction

Mani's story¹ highlights the ways that the justice system prioritizes tracking and surveilling youth over supporting their well-being. Ankle monitors – and other emerging forms of electronic surveillance such as smartphone tracking apps² -- prevent youth from participating as

¹ We thank Mani for sharing her first-hand experiences with us. Mani's story and additional analyses were written in partnership with Mani by Angela Laureano, the lead coordinator of the Incarcerated Scholars Program at UC Berkeley Underground Scholars. We recognize Angela for her work to research and elevate the voices of young people with lived experience on ankle monitors or with other aspects of the youth justice apparatus. Please see Angela's forthcoming paper on this topic: Laureano, A. (In Progress). Extending the web of carcerality to the home: Black youth on electronic monitoring. *Firebaugh Scholars Program*, 1-26.

² Smartphone tracking devices are an emerging form of electronic surveillance that have many of the same problems as ankle monitors. Although this toolkit focuses primarily on more traditional ankle monitors, which have a longer history of use on adults and youth, we already have insight into some of the problems with the smartphone tracking devices. For instance, in

full members of society and take a toll on their mental and physical health. This is counterproductive to ensuring that young people develop in healthy ways and are able to end their involvement in the legal system quickly and successfully.

This toolkit provides strategies focused on ending these punitive and de-humanizing practices to monitor and control youth. The pathway to ending the use of electronic surveillance for each community will be different, but our north star is to implement alternatives to both traditional prisons and virtual shackles. Instead of electronic surveillance, our responses to youth misbehavior³ should be limited, community-based, people-centered and culturally responsive. These supports for young people will improve community safety and youth well-being, and promote racial justice.

In our pursuit of this goal, we must consider how the justice system has historically been, and continues to be, an instrument of social control over people of color. Therefore, our efforts to end the use of ankle monitors must center the experiences of Black, Brown and other marginalized young people.⁴

This toolkit is organized into five sections:

- I. Research shows that electronic monitoring is harmful to youth.
- II. How to research your own community's use of electronic monitoring of young people.
- III. Sources of information to answer your questions.
- IV. Who will do all this work?
- V. Developing solutions.

The toolkit concludes with ideas about what to do with the information you've gathered. While your end goal may be to eliminate the practice altogether, an interim step could be to implement safeguards that shrink and limit the use of EM and simultaneously, build up community-based programs that can support young people who are arrested and/or found guilty⁵ in juvenile court. Collectively, we can advocate for investment in the structural health of our communities and end the practice of using ankle monitors and other forms of electronic surveillance on young people.

some places, young people are subject to warrantless searches of their cellphones and other electronic devices which presents privacy concerns, as we discuss in our research section. Advocates who are concerned with the harms of ankle monitors should have smartphone tracking on their radar as well. SmartLINK by [BI Incorporated](#) (who call themselves "the world's leading full-service electronic monitoring company" and are not to be confused with the W. Haywood Burns Institute), is one example of a phone-based app.

³ We are using the term "youth misbehavior" to refer to behaviors that young people exhibit that result in negative responses, punishments, or consequences from adults and others in authority. Youth misbehavior includes normal adolescent behavior of testing authority and breaking the rules, which in privileged, often white, communities is not criminalized and does not result in justice system involvement. Youth misbehavior also includes common youth behavior such as experimenting with alcohol or drugs, skipping school, staying out past curfew, and law-breaking activity.

⁴ The experiences of other marginalized populations including LGBTQ, gender non-conforming, youth with disabilities and youth in communities of concentrated poverty, should be examined, as well as the intersections between them.

⁵ The terminology used in juvenile court is "adjudicated delinquent." A delinquency adjudication is the youth justice equivalent of a conviction in adult criminal court.

Who is this toolkit for?

Youth justice organizers and advocates! This includes: youth directly impacted by justice system involvement and their families, youth workers, grassroots and advocacy organizations, defense attorneys, and the leadership and staff of reform-minded justice agencies.

If you are a defense attorney who wants help with strategies to bring legal challenges to the use of electronic monitoring for your clients, feel free to contact the [National Juvenile Defender Center](http://njdc.info) (njdc.info) or Kate Weisburd at kweisburd@law.gwu.edu.

Other groups are also working on limiting the use of electronic monitoring in the adult system. Some of the strategies may be applicable to the juvenile legal system as well. For more information check out the [Challenging E-Carceration](https://www.challengingecarceration.org/) project (<https://www.challengingecarceration.org/>) and [Media Justice](https://mediajustice.org/campaign/nodigitalprisons-challenging-e-carceration/) (<https://mediajustice.org/campaign/nodigitalprisons-challenging-e-carceration/>).

Research Shows that Electronic Monitoring is Harmful to Youth

The negative impact of youth incarceration is increasingly understood and accepted along the political spectrum. Support for alternatives to incarceration is rooted in moral, fiscal, and practical concerns, and has led to the increased use of alternatives over the past two decades. Electronic surveillance as a “benign alternative” to physical imprisonment has gained momentum in the last few decades. Ankle monitor technology is now widespread, with new types of electronic surveillance (such as cell phone monitoring), emerging.



A 2019 study by **Catherine Crump** documents just how extensive and invasive electronic monitoring of youth is in California.⁶ Crump found that:

- 90 percent of California counties used some form of electronic monitoring or global positioning system (GPS) technology⁷ to track approximately 10,000 individual young people each year.
- Fifty-three out of California’s 58 counties have electronic monitoring programs.
- 92 percent of California’s youth population (ages 10-17) reside in these 53 counties.
- The five counties with the largest number of unique youth on EM were: Los Angeles (2,941), Orange (800), Sacramento (688), Fresno (497), and Alameda (462).

⁶ Catherine Crump, *Tracking the Trackers: An Examination of Electronic Monitoring of Youth in Practice*, UC Davis Law Review. Data collection took place during 2018 and 2019 and is based on public records act requests, informal queries, and follow up interviews with probation department officials and attorneys active in the juvenile system. During the 12-month period roughly corresponding to 2017, Crump’s data collection reflected approximately 10,000 unique young people on EM. We understand these numbers are changing quickly in some counties. Crump is making another public records act request to update the California data.

⁷ See appendix A for glossary of terms and further explanation of the types of technology used. In brief, radio frequency (RF) devices rely on battery-powered transmitters and home-based receivers, which allow the device to communicate that a person is home but cannot track the person’s movements outside the range of the home for which it is programmed. Global positioning system (GPS) devices rely on satellites and cell towers to track a person’s movement continuously and provide real-time updates.

In this section, we share key points from research about the impact of EM on young people. While more research about EM is focused on adults, there are resources here about youth and electronic surveillance that may be valuable in your advocacy work. ***Electronic Monitoring of Youth in the California Justice System***⁸ reviews juvenile electronic monitoring program rules and policies in the 51 of 58 California counties that use electronic monitoring on youth. It is an excellent resource with a full catalogue of county policies such as terms and conditions, privacy policies, and a model public records act request.⁹ All of these resources are available online, and this type of research project (or components of it) could be replicated in other states or counties.

Ankle monitors appear to be race neutral but overwhelmingly exercise social control over Black and Brown bodies.

We make five key points in this section:

1. EM is more accurately characterized as “punishment” rather than as a positive alternative to secure detention.
2. EM violates privacy.
3. EM is a manifestation of a structurally racist system and does not fundamentally reduce disparities or build structural well-being.
4. The rules of EM are a poor fit for adolescent brains and healthy youth development.
5. Community-based programs can do a better job!

1. EM is more accurately characterized as “punishment” rather than as a positive alternative to secure detention.

While fiscal concerns¹⁰ have received the most attention, electronic surveillance inflicts other serious harms upon youth and their families. In her 2015 paper, *Monitoring Youth: The Collision of Rights and Rehabilitation*, **Kate Weisburd** debunks three common myths and explains why electronic monitoring should be categorized as a form of punishment. Weisburd’s paper is based on surveys she administered, her own extensive experience as a defense attorney in juvenile court, and legal and academic research.

Myth: EM keeps kids out of detention.

Fact: Ankle monitors do not necessarily lower incarceration rates because constant scrutiny results in more system responses. In fact, youth who are placed on EM often end up back in

⁸ The report represents a joint effort by U.C. Berkeley School of Law’s Samuelson Law, Technology & Public Policy Clinic and the East Bay Community Law Center. It can be accessed online at: https://www.law.berkeley.edu/wp-content/uploads/2017/04/Report_Final_Electronic_Monitoring.pdf

⁹ All of these documents can be found online here: <https://www.law.berkeley.edu/experiential/clinics/samuelson-law-technology-public-policy-clinic/resources-and-publications/privacyandsecurity/electronic-monitoring-youth-california-justice-system/>

¹⁰ Fiscal concerns include a) that poor families are pushed further into debt and instability as a result of fees and fines associated with the ankle monitor and b) that the true cost of the technology may not be captured accurately in estimates. Moreover, early research from states and counties which have historically not charged fees to families suggests that the negative effects of constant electronic surveillance reach far beyond a financial burden.

detention.¹¹

Myth: EM is far less expensive than detention.

Fact: The costs of ankle monitors are often shifted from the government to the individual being monitored. In many jurisdictions across the country, young people and their families are billed anywhere from \$10-20 per day to be on a monitor.¹²

Myth: EM will “keep us safe” and aid in rehabilitation.

Fact: Ankle monitors do not provide pathways to healthy development, rehabilitation or child well-being, which are all better avenues to create public safety in the short- and long-term.

Chaz Arnett makes the case that comparisons of electronic monitoring to prison blind us from fully understanding the punitive aspects of electronic monitoring. Arnett makes these important points:

- Technological advances might “lead to even more powerful forms of social control.”¹³
- Electronic surveillance of young people is yet another manifestation of the “adultification” of youth within the justice system.
- Little thought went into the shift from using electronic surveillance on adults to youth.
- The negative experiences on ankle monitors for adults are magnified for adolescents. This is based on a significant body of research on adolescent development.

2. EM Violates Privacy

The ability to track a youth’s location using EM devices is invasive. How this information is collected, used, and accessed raises major concerns about violations of Fourth Amendment privacy protections, and harm that can be caused by use and misuse of this information. Currently, there are limited barriers that check and regulate access to mass data collection of people on EM, including youth.

The Fourth Amendment to the U.S. Constitution reads:

¹¹ Because electronic monitoring can almost perfectly detect inevitable imperfections in behavior, it increases the risk of technical violations and often results in reincarceration. Kate Weisburd provides her own research evidence for this statement, but additional research from youth and adult systems provide support for this statement. See Kathryn Saltmarsh, Ill. *Sentencing Policy Advisory Council, Research Briefing: State Use Of Electronic Monitoring* 6-8, Illinois Sentencing Policy Advisory Council (2019); Kendra Bradner, Vincent Schiraldi, Natasha Mejia, and Evangeline Lopoo, *More Work to Do: Analysis of Probation and Parole in the United States*, Columbia Justice Lab, 2017-2018; Aaron Cantu, *When Innocent Until Proven Guilty Costs \$400 a Month—and Your Freedom*, VICE, May 28, 2020.

¹² Per email communication with Kate Weisburd, 10/28/2020. Not all states or counties allow families to be billed for these costs though many do. For instance, administrative fees for youth in California were prohibited by the passage of Senate Bill 190 (Mitchell) in 2017.

¹³ Chaz Arnett, *Virtual Shackles: Electronic Surveillance and the Adultification of Juvenile Courts*, 108 J. Drim. L. & Criminology 399 (2018). <https://scholarlycommons.law.northwestern.edu/jclc/vol108/iss3/1/>

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”¹⁴

Warrantless electronic surveillance is dramatically transforming community supervision and, as a result, amplifying a growing privacy-protection disparity between people who are not in the criminal legal system and those who are.

In *Sentenced to Surveillance: Fourth Amendment Limits on Electronic Monitoring*, Kate Weisburd explains threats to fourth amendment protections and the legal trends that underlie them. *Tracking the Trackers and Electronic Monitoring of Youth in the California Justice System* also delve into privacy concerns related to the use of EM on youth, and are good resources for more information on this topic. Key points to note from these papers include:

-
- A growing bipartisan consensus agrees that “digital is different” when it comes to government surveillance of private citizens, and that there is a need to significantly limit electronic surveillance of private citizens. This is reflected in both statutory efforts and court decisions. Broadly speaking, privacy protections for people who are *not* in the criminal legal system are getting stronger. However, for the 4.5 million plus people in the U.S. on various forms of community-based supervision, including youth, privacy protections are being eroded in insidious ways.¹⁵
 - Only a few counties in California provide information about privacy protections while the majority do not address data privacy at all.¹⁶
 - Some counties implement vague and general policies. For example, San Francisco’s policy reads: “all information collected during [the youth’s] participation on the program may be turned over to anyone with a legal right or need to know.”¹⁷
 - Probation officials are not immune from bias.¹⁸ If an official chooses to access information that exceeds the scope of probation purposes, most counties lack checks and balances to prevent improper use of this information.

¹⁴ <https://constitution.congress.gov/constitution/amendment-4/>

¹⁵ *Sentenced to Surveillance: Fourth Amendment Limits on Electronic Monitoring*, Kate Weisburd. 98 N.C.L. Rev. 717 (2020). Accessed online: <https://northcarolinalegislature.org/2020/05/13/sentenced-to-surveillance-fourth-amendment-limits-on-electronic-monitoring-kate-weisburd/>

¹⁶ *Electronic Monitoring of Youth in the California Justice System* report, U.C. Berkeley School of Law’s Samuelson Law, Technology & Public Policy Clinic and the East Bay Community Law Center, 2017. Accessed online: https://www.law.berkeley.edu/wp-content/uploads/2017/04/Report_Final_Electronic_Monitoring.pdf

¹⁷ See appendices from *Electronic Monitoring of Youth in the California Justice System* report, U.C. Berkeley School of Law’s Samuelson Law, Technology & Public Policy Clinic and the East Bay Community Law Center, 2017. Accessed online: <https://berkeley.app.box.com/v/policyappendixfinal>

¹⁸ <https://www.google.com/url?q=https://youthlaw.org/wp-content/uploads/2015/06/Implicit-Bias-Juvenile-Justice-Lit-Review-for-ncyl-web3.pdf&sa=D&ust=1597092466957000&usg=AFQjCNE0mcsEaqo8xly22AC63PUcwGKXxQ>

While this is a complex topic regarding quickly evolving technology, as well as shifting legal precedents, lawyers representing individual youth, as well as advocates, should be aware of the current lack of privacy protections for youth on EM. Ways to mitigate these concerns include eliminating the use of EM on youth altogether, or implementing specific and transparent policies which limit the use of data.

3. *EM is a manifestation of a structurally racist system and does not fundamentally reduce disparities or build structural well-being.*

Research and personal testimony support the premise that EM is a manifestation of a structurally racist system, an issue that Arnett and Weisburd both address in their work. Sociologist Victor Rios also writes about this in his book, “*Punished: Policing the Lives of Black and Latino Boys*.”¹⁹

- Weisburd notes that “poor youth and youth of color are at a distinct disadvantage when it comes to monitoring” as the stringent rules and requirements “add almost impossible stress to families already struggling to survive day to day on very little.”
- Victor Rios studied the lives of 40 black and Latino teens in Oakland, where he himself grew up. He concluded that in this community, and similar ones, “a general culture of punishment trickles down from schools, law enforcement, community and other institutions that deeply affects these young men’s perceptions of themselves and their world long before they get involved in crime, and ultimately helps push many of them toward it.”²⁰

Racial disparities in adult and youth justice system involvement have been documented extensively over time, both at the local and national levels.²¹ In particular, Black, Native American and Latino youth have disproportionately high rates of involvement; and rates of involvement get higher as youth of color go deeper into the justice maze.

Nationally, in 2017 (the latest year for which data are available), Black youth were 4.6 times as likely as White youth to be incarcerated; Native American youth were 2.9 times as likely; and Latinx youth were 1.4 times as likely.²²

¹⁹ Victor Rios. *Punished: Policing the Lives of Black and Latino Boys*. June 2011, NYU Press.

²⁰ <https://www.scp.org/blogs/multiamerican/2011/09/20/7369/youth-and-punishment-on-the-hypercriminalization-o/>

²¹ *Reforming Juvenile Justice: A Developmental Approach* (2012). National Research Council, National Academy of Sciences. Accessed online: https://sites.nationalacademies.org/dbasse/CLAJ/Reforming_Juvenile_Justice/index.htm.

²² Source: National Census of Juveniles in Residential Placement, Office of Juvenile Justice and Delinquency Prevention (OJJDP). These data are based on a one-day count of youth in out-of-home placement facilities on the day of the census. More national and state data can be accessed and analyzed online using BI’s interactive “United States of Disparities” tool at: usdata.burnsinstitute.org.

Compared to their White counterparts, in 2018, Black youth in California were 8.6 times as likely to be placed in an institution or on EM; Latinx youth were 2.6 times as likely; and Native American youth were 3.0 times as likely.²³



In Cook County, Illinois a study by the Chicago Community Bond Fund showed that Black people comprised approximately 25 percent of the general population, but between 70 and 80 percent of those subjected to monitors from 2010 to 2016.²⁴

A 2015 study of over 1,000 adults in Kentucky showed that Black adults had a significantly lower likelihood of preferring electronic monitoring over prison than their white counterparts. In other words, the Black adults in this study viewed electronic monitoring as more punitive than the white adults, and in some cases, would choose time in prison over longer periods of monitoring in the community. Even though this was a study of adults, this study is significant given our country's history of using the criminal justice system to legitimize social control over Black and Brown bodies.

One directly-impacted person of color described EM as “being offered a rope to hang yourself with.” Another formerly incarcerated person of color described EM in this way: “EM can be more f***** up than being in jail because if you live in the ghetto and if your neighborhood is at war with another or at war with itself, it pretty much makes you a sitting duck because you can't leave.”

²³ Source: California Department of Justice (CA DOJ). BI accessed data through a public information act request. CA DOJ also publishes statewide data in its Annual Juvenile Justice in California Reports. More California data can be accessed and analyzed online using BI's interactive “State of Disparities: California” tool at: californiadata.burnsinstitute.org.

²⁴ See Chicago Community Bond Fund, *Punishment is Not a “Service”: The Injustice of Pretrial Conditions in Cook County* (October 24, 2017), p.13. <https://chicagobond.org/wp-content/uploads/2018/10/pretrialreport.pdf>

These personal statements, as well as the Kentucky study, speak to the stress that being on EM can create and why EM is not uniformly perceived as a better option than jail or prison.

*EM can be more f*** up than being in jail because if you live in the ghetto and if your neighborhood is at war with another or at war with itself, it pretty much makes you a sitting duck because you can't leave.*

4. The rules of EM are a poor fit for adolescent brains and healthy youth development

In ***Reforming Juvenile Justice: A Developmental Approach***, The National Research Council says, “The past decade has seen an explosion of knowledge about adolescent development and the neurobiological underpinnings of adolescent behavior.” The ongoing use of EM is not in line with what we know about young people, the pathways by which they become involved with the justice system, or the effectiveness of prevention and treatment programs. We know:

- EM requirements typically enforce the same rules and guidelines on children as if they were adults, using EM as a system of constant surveillance.
- This “adultification” ignores the crucial fact that young people’s brains are still developing and they do not possess the same level of reasoning or self-control as adults.
- Sociologist Victor Rios calls this system the “youth control complex,” in which every day youthful behavior is viewed as potentially criminal.
- Oftentimes, EM becomes an extra burden for a child who may already be tasked with satisfying the conditions of their probation which may include attending counseling, doing community service, and obeying curfew.
- Kate Weisburd notes that the more detailed and lengthy the probation terms, the harder it is for adolescents to comply. Weisburd’s study revealed that a staggering 50% of surveyed youth under EM violated probation terms.

5. Community-based programs can do a better job!

If EM isn’t the answer, what is? Available evidence suggests that community-based programs are best positioned to serve youth in a manner that avoids the harms created by EM, while actively promoting healthy youth development, community well-being, and public safety. In her work, Weisburd proposes, as we do here, that greater investment in community-based, non-legal interventions offers more promise for youth than the dangerous expansion of EM.

- A well-established body of research shows that “having one or more caring adults in a child’s life increases the likelihood that they will flourish, and become productive adults themselves.”²⁵ The robust growth of mentoring programs in recent years is based on this research. Evaluations of high-quality²⁶ mentoring have found these programs have positive impacts on youth outcomes.
- Electronic monitors aren’t mentors. Mentors come from trusted relationships that are built over time, and endure beyond a child’s time on probation.
- Community-based programs are more cost-effective than most justice system interventions, which by design include involvement of a range of agencies including law enforcement, probation, public defenders, district attorneys, and the courts. There is a high price tag when all of these agencies are involved in responding to a youth’s actions.
- Published studies have focused on the cost comparisons between incarceration and community-based services.²⁷ These studies support our point that investing in community-programs for youth is less expensive than traditional justice system responses.
- ***Safely Home***, a 2014 study by Youth Advocates Programs, cited data based on a study in Florida: “A community-based program that can create a wraparound community for a youth, individualize services based on the unique needs of each youth, engage the family and connect the youth to neighborhood resources, costs on average \$75/day.”²⁸

Emerging research from the EBP+ Network highlights the efficacy of several community-based program models that serve youth of color successfully, even when youth have been charged with serious and/or violent crimes.²⁹ These organizations, all headed by leaders of color with lived experience in the justice system, can provide critical guidance on how to develop

²⁵ Child Trends Research Brief. Caring Adults: Important For Positive Child Well-Being. December 2013; Caring Relationships as a Protective Factor for At-Risk Youth: An Ethnographic Study, Erik K. Laursen & Scott M. Birmingham (2003).

²⁶ Defined as those that meet standards for training, supervision and duration.

²⁷ For instance, *Sticker Shock: Calculating the Full Price Tag for Youth Incarceration* (2014) from the Justice Policy Institute. This report does a good job of laying out the costs that society bears for our overreliance on confinement of youth. Budding researchers may be interested in conducting a similar cost comparison for the use of EM versus community-based programs in your county. Sticker Shock can be accessed online:

http://www.justicepolicy.org/uploads/justicepolicy/documents/sticker_shock_final_v2.pdf

²⁸ *Safely Home: Reducing youth incarceration and achieving positive outcomes for high and complex need youth through effective community-based programs*. Youth Advocates Programs, Inc. (June 2014). Accessed online:

<http://www.yapinc.org/portals/0/documents/safely%20home%20preview/safelyhome.pdf?ver=2.0>

²⁹ The EBP+ Collaborative is comprised of 12 base-building organizations across the country (four are in California) plus the W. Haywood Burns Institute and Impact Justice. To read more about the EBP+ Collaborative, see: *The EBP-PLUS Model: Liberating Youth, Families, and Community from the Justice System, Policy Brief #1*, March 2018.

alternatives and invest in communities in ways that improve the well-being of youth of color, who are at most risk of being placed on ankle monitors.

The youth outcomes that EBP+ members aim to support include:

- elevating youth leadership and expertise
- facilitating youth resourcefulness
- supporting youth healing
- encouraging youth connectedness, and
- mobilizing youths' forward movement.

We have yet to identify any electronic monitoring program that explicitly names these types of youth development outcomes as objectives for putting youth under electronic surveillance, because of course, a surveillance device could not achieve such outcomes.

The EBP+ model removes the unnecessary and problematic “youth control complex” that forces children to face constant surveillance during their time on EM. Instead of forcing a youth to live under the constant stress of committing a minor technical infraction, the EBP+ approach promotes taking positive and constructive steps towards self-improvement and growth.

To recap:

- Academic studies as well as testimony from those with lived experience tell us that electronic monitoring of youth is unproductive.
- The burden of this harmful practice falls on youth of color.
- Instead, community-based programs have been shown to yield positive results, both for young people on probation, as well as for those not involved with the legal system.
- Unlike the unclear objectives of electronic monitoring, community-based alternatives provide far more potential to achieve youth well-being and community well-being.
- Community-based programs are less expensive and are the only effective way to invest in both youth and structural well-being in the long-run.
- EBP+ is one model to consider, but not the only option.

Gray Area: A Tough Question Not Answered by the Research

Between the myths about EM and what the research tells us, there is a gray area. People with the best of intentions pushing for the complete abolition of EM, who are *not* currently incarcerated, face a difficult question. Some currently incarcerated folks might prefer the landmines of EM to remaining in detention, jail or prison, particularly in these times of COVID.

While many advocates seek to abolish the use of EM, we must ask, at what immediate cost and to whom? There isn't one right answer to this question. Your local coalition should include the perspectives of people who are directly impacted by your advocacy work. This includes those currently incarcerated who may view EM as their most likely pathway to avoid the dangerous health conditions they face inside, as well as those currently and previously on EM, their family members and community members.

How to Research Your Own Community's Use of Electronic Monitoring

To help you assess the use of electronic monitoring on youth in your community and to challenge and/or end the practice in your area, we have organized a series of key questions into the following two frameworks. You will likely need to use both in your research phase.

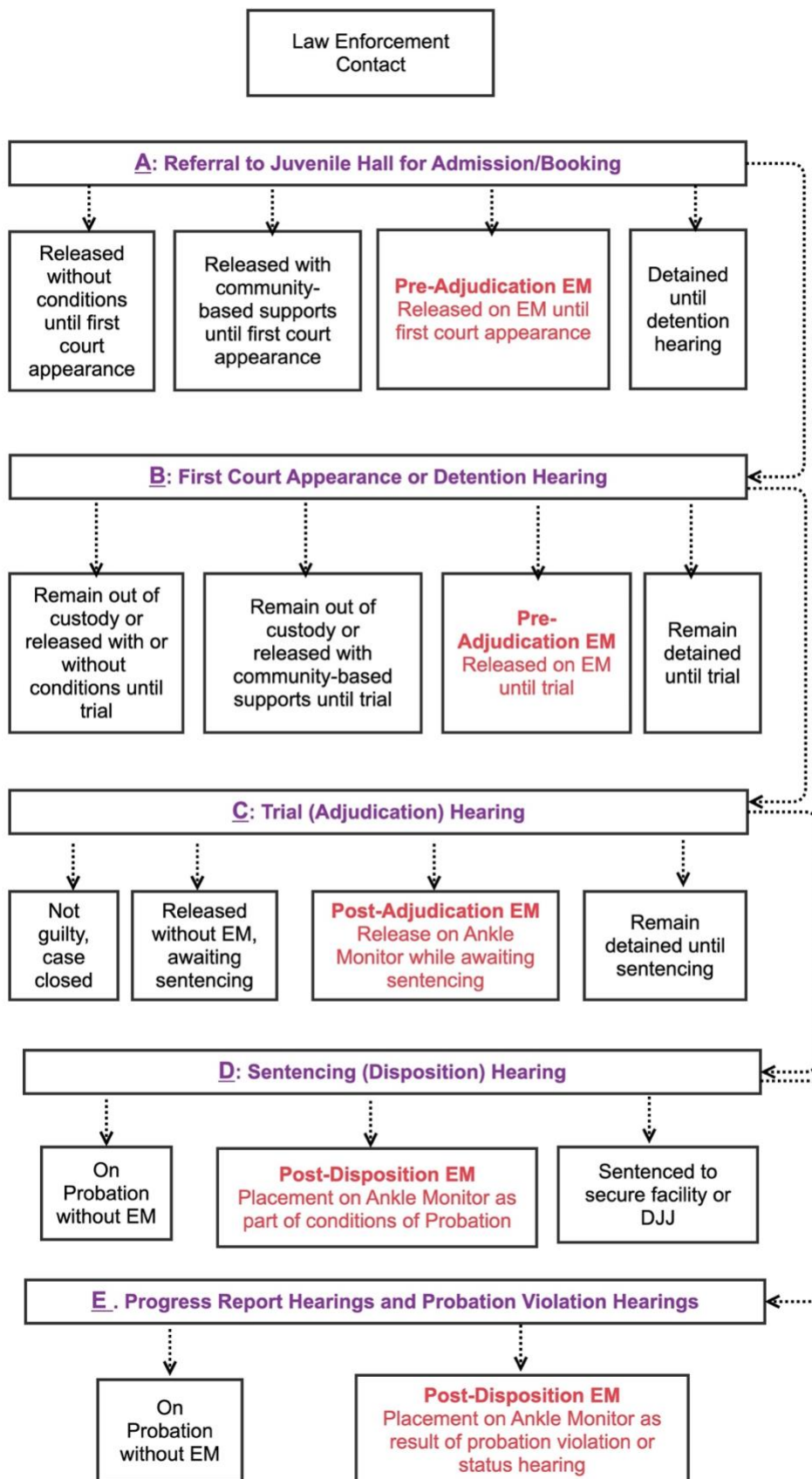
Framework 1: system mapping and decision point analysis (Fig. 1a & 1b)

A system map is a diagram of the different stage(s) of the juvenile court process. It helps people visualize key points of contact with the system and decisions that are made. **Figure 1a** provides an example of a generic system map. Your map should create a picture of how young people are processed through the system from entry until exit, with a focus on any pathway that leads to getting onto EM. The system map does not need to include every decision, as that will lead to a very complicated map. Decision point analysis goes hand in hand with mapping. It is a structured approach to identifying decision-makers, outcomes, policies, practices and data at key decision points within the juvenile court process. **Figure 1b** provides examples of decision point analysis at five key points (A-E) that correspond with the generic system map in Figure 1.

Framework 2: key questions (Fig. 2).

In order to understand how EM is being used in your jurisdiction, you will need to ask additional questions about context, criteria for determining who will be placed on ankle monitors, and what data and documentation are available.

Figure 1a: Generic System Map



A system map creates a picture of how young people are processed through the justice system from the time they enter until the time they leave. Each community has structured its system somewhat differently.

Figure 1a is a generic system map we created based on actual jurisdictions we have worked with. It does NOT map every outcome or decision-point but is a simplified map to show key points that may lead to placement on EM.

The boxes in red are points at which youth get placed on ankle monitors. The boxes that lead up to the decision to place a youth on an ankle monitor are all places where you might intervene in order to get the youth *off* the track to the ankle monitor. It is also important to prevent more restrictive outcomes like being admitted to detention, being placed on probation, or being made a ward of the court and removed from the home.

Your system map can be used in tandem with decision point analysis illustrated in **Figure 1b**.

Decision point analysis includes a set of questions to unpack how decisions are made: who makes the decision; what policies govern the decision; what actually happens in practice; and what quantitative (numbers) or qualitative (stories, personal experience or insight) data are available.

Figure 1b: Decision Point Analysis Example Table (see appendix for blank table)

Note: These are not necessarily policies we advocate for or policies from one particular jurisdiction. They are examples based on our experience in many jurisdictions that illustrate how the decision point analysis should be completed.

	Who are the DECISION MAKERS?	What are the possible OUTCOMES at this point in the process?	Is there a formal POLICY in place?	What happens in PRACTICE?	What DATA are available to see whether practice aligns with policy?
A: Referral to Juvenile Hall for Admission/Booking ³⁰	<ul style="list-style-type: none"> Probation (booking/ intake unit) 	<ul style="list-style-type: none"> Released without conditions Released with community-based supports Placed on pre-adjudication EM Detained 	Policy is to use risk assessment instrument (RAI) ³¹ score: youth who score medium placed on EM until detention hearing	Few youth are “released outright” from booking. Most low scoring youth are placed on EM and virtually all medium-scoring youth are detained.	<ul style="list-style-type: none"> RAI scores by booking decision (See Appendix C table 3)
B: Detention Hearing	<ul style="list-style-type: none"> Judge Probation (influencer) 	<ul style="list-style-type: none"> Released with or without conditions until trial Released with community-based supports Placed on pre-adjudication EM until trial Remain in detention 	<p>Probation submits a “detention report” which includes the RAI score and a recommendation about the use of EM.</p> <p>Relevant state law defines the limits of judicial authority.</p>	One judge is a big fan of EM and tends to use it for most youth, whereas a second judge is known to detain even “low risk” youth until disposition.	<ul style="list-style-type: none"> Outcome of detention hearings disaggregated by judge and by probation recommendation. (see Appendix C tables 4 and 5)
C: Trial (Adjudication) Hearing	<ul style="list-style-type: none"> Judge Probation (influencer) 	<ul style="list-style-type: none"> Not guilty Adjudicated guilty 	<p>For example, California code that governs the detention hearing is found in Welfare & Institutions Code (WIC) 632.</p>	Within the confines of the law, each judge makes decisions based on available evidence, experience and “gut feelings.”	<ul style="list-style-type: none"> Outcome of trial Probation recommendation vs. judge’s decision
D: Sentencing (Disposition) Hearing	<ul style="list-style-type: none"> Judge Probation (influencer) 	<ul style="list-style-type: none"> Dismiss Divert Place on Probation at home without EM Place on Probation at home with EM Remove from home and place in institution 		Probation makes a recommendation about supervision levels. Data shows that one judge tends to closely align with probation’s recommendation, and the other follows it about 50% of the time.	<ul style="list-style-type: none"> Outcome of sentencing Probation recommendation vs. judge’s decision Days ordered on EM
E: Progress Report Hearings and Probation Violation Hearings	<ul style="list-style-type: none"> Judge Probation (influencer) 	<ul style="list-style-type: none"> Terminate probation Extension of probation or change of conditions Placed on post-adjudication EM Remand into detention 		Both judges tend to rely heavily on Probation’s report and recommendation when there is a hearing due to a violation of probation.	<ul style="list-style-type: none"> Probation recommendation vs. judge’s decision Outcomes of probation violation hearing

³⁰ In addition to examining probation and court policies and practices that directly lead to use of ankle monitors, it may help to explore whether youth can be diverted at earlier points in the system, namely when police make contact. You can use this framework at the point of law enforcement contact with youth, or any other decision point in the system. Additionally, research whether there are existing diversion programs or alternatives to detention (ideally community-based) that might be used in lieu of arrest or ankle monitors: who runs the programs, who refers youth, eligibility criteria, how they are funded, and whether any might be appropriate to provide support to youth in lieu of further system involvement.

³¹ The W. Haywood Burns Institute has significant concerns about the use of risk assessment tools to make decisions about young people who come into contact with the justice system. These tools reinforce structural racism rather than shifting investments to communities to improve well-being.

Figure 2: Key Questions about Electronic Monitoring, Organized by Topic

The Basics/ Context	<ol style="list-style-type: none"> 1. What is the jurisdiction’s stated purpose for placing youth on ankle monitors? 2. What types of ankle monitors are being used?³² 3. Are families charged fees? What are the other costs of having a child on EM (i.e., having to get a landline phone)? What impact do these costs have on the family’s financial situation? Are there statutory guidelines about ability to pay determinations? If so, are the guidelines being followed? 4. Are there limits to how long youth can be on an ankle monitor? 5. How does the jurisdiction define success and failure for the ankle monitor programs? <ol style="list-style-type: none"> a. What happens when youth “fail”? b. What happens when youth “succeed”? 6. How are technical violations³³ of the rules handled? Does the Probation Officer or Home Detention Officer have discretion in responding? 7. How does Probation report back to the court on a youth’s progress on the ankle monitor?³⁴
Eligibility	<ol style="list-style-type: none"> 1. What are the criteria for placing youth on ankle monitors? 2. Are there protocols to reduce net widening (e.g. to ensure that youth who otherwise would have been released without any conditions or with support of CBOs are not placed on ankle monitor)? 3. Are there any groups of youth for whom ankle monitors are categorically considered inappropriate? E.g. youth under a certain age, youth with cognitive disabilities, youth who are declared incompetent under WIC709, etc.
Docu- mentation (see appendices for sample documents)	<ol style="list-style-type: none"> 1. What contracts are youth and guardians required to sign when youth are placed on the ankle monitor? 2. What are the rules or conditions youth must follow while on the ankle monitor? For instance, are youth on house arrest while on the monitor? Do they have to charge their device at the same time every day? Etc. 3. What training and policy documents are provided to probation officers supervising youth on ankle monitors? 4. Are there policies regarding data confidentiality that state who will have access to the data collected about individuals and under what circumstances?
Quantitative Data	<p>Quantitative data can give you a sense of the scope of use, how long youth stay on, and how many youth are deemed “successful” vs. “failing” on the monitor. A few sample questions follow - SEE APPENDIX FOR TABLES.</p> <ol style="list-style-type: none"> 1. How many youth are placed on each type of ankle monitor (EM and GPS, pre- and post-adjudication)? 2. How long do youth stay on the ankle monitor (average and median length in days)? 3. Are youth placed on ankle monitor according to the stated criteria/eligibility?³⁵ 4. What is the “failure rate”? (of all youth placed on an ankle monitor, how many “fail” in a given time period) 5. What are the reasons for failure?
Qualitative Data	<p>In addition to gathering quantitative data, qualitative data can help convey the personal impact of monitoring. A few example questions follow that might be used to interview youth who have been on ankle monitors and their family members. SEE APPENDIX FOR ADDITIONAL QUESTIONS.³⁶</p> <ol style="list-style-type: none"> 1. How did you feel being on the monitor? 2. How did it impact your family (or whoever you lived with) or any other people in your life? 3. If you are a parent, how did it impact your ability to parent your children? 4. Do you think this is a form of incarceration? 5. If you could have 5 minutes alone with heads of juvenile probation or courts, what would you tell them about EM?

³² In some jurisdictions, both EM and GPS are used. In others, there are home confinement programs that may be called “home detention,” “community release” or a host of other names. Some of these require youth to be on EM and others do not. Ask about the types of programs and what they are called in your jurisdiction. You may wish to inquire about the use of cell phone tracking apps as well.

³³ We are defining “technical violations” to mean when a rule related to the ankle monitor is not followed, such as not charging the ankle monitor or going “out of bounds” (whether that’s into the yard outside the home or further without advance permission). We do not include new law violations in this definition.

³⁴ Does a particular unit (e.g. “home supervision” or “community confinement”) provide a separate report or is the information included within a regular progress report written by the youth’s probation officer?

³⁵ For instance, if a medium score on a detention risk assessment instrument is supposed to correlate with being released on ankle monitor, how many youth who score low, medium and high are placed on ankle monitor?

³⁶ We thank Angela Laureano and James Kilgore for contributing these interview questions from their research on the impacts of electronic monitoring on youth.

Sources of Information to Answer your Questions

It's likely that you will need to go to different sources to get answers to the questions posed throughout this guide. In many jurisdictions, particularly in California, the probation department and juvenile court judge should be able to answer many of these questions. Additionally, counties have bodies that are tasked with administering, overseeing or setting policies and funding as it relates to system involved youth. You can contact your county's "juvenile justice commission," "juvenile justice/delinquency prevention commission"³⁷ and/or the "juvenile justice coordinating council."

You can also see what data are collected by state agencies and may be made available to the public.³⁸ If you are not able to get voluntary responses to your questions, it may be helpful to submit a public records act request.³⁹

Counties across the country who have been involved with Annie E. Casey Foundation's "Juvenile Detention Alternatives Initiative" (JDAI)⁴⁰ have a governing body in place that meets regularly (quarterly, bi-monthly or monthly) to discuss and implement reforms to the juvenile justice system.

A Sample Juvenile Justice and Delinquency Prevention Commission's Mission Statement

The Juvenile Justice and Delinquency Prevention Commission of Alameda County is a state-mandated, court-appointed authority. The general purpose of the Commission is to inquire into the administration of the juvenile court law in this county in order to ensure that the rights or physical, mental or moral welfare of children are not violated or threatened by their present circumstances or environment. The Commission is dedicated to the promotion of an effective juvenile justice system operated in an environment of credibility, dignity, fairness, and respect for the youth, their families, and their communities. The Commission's responsibilities include:

- Annual inspections of juvenile facilities including any jail or lockup shelters within the County, and detention facilities and group homes used for the confinement and/or placement of any minor in Alameda County;
- Conducting public or closed hearings on matters relating to juvenile law in the County; and
- Advocating for youth and needed services for youth in the justice system

³⁷ Sample statement from Alameda County retrieved on December 10, 2019 from: <https://probation.acgov.org/juvenile-services/juvenile-justice-delinquency-prevention-commission.page>

³⁸ For example, in California, the Department of Justice (DOJ) collects data from each county and publishes an annual "Juvenile Justice in California" report in PDF format. Although DOJ does have data at the county-level, it is not easily available to the public. Additionally, data submitted to California DOJ by counties as part of required state data collection *does not distinguish between youth who are placed in institutions versus on ankle monitor*. Local probation departments typically *do* track youth on ankle monitors independently from those who are detained or incarcerated. The W. Haywood Burns Institute is launching an online data tool to help the public access and analyze available California youth justice data from the California Department of Justice. For updates, visit our data hub at <https://data.burnsinstitute.org/>.

³⁹ Sample request here: <https://www.law.berkeley.edu/wp-content/uploads/2017/04/Sample-PRA-Request.pdf>

⁴⁰ See: <https://www.aecf.org/work/juvenile-justice/jdai/>

Who Will Do All This Work?

You may already be part of a coalition or working group that's interested in gathering answers to these questions and advocating for alternatives to ankle monitor technology. Whether you are just forming a group, or already have a coalition in place, think about the composition of your membership and consider who will provide critical insight who is not a part of the group yet. For instance:



- Does your group include **youth** who have been directly impacted by EM and their families? If not, do you have a way to get their input?
- Does your group include **service providers** and others who work with youth directly in the community? Community based organizations that provide recreational opportunities, paid jobs, and other types of support may be recruited to provide programming for youth instead of electronic surveillance.
- Do you have **members who understand how your local youth justice system operates**? Your local public defender may be able to offer technical legal advice, share information about trends they are seeing in court, and answer questions about how your local system functions.
- Do you have a relationship with other “**justice system stakeholders**” such as people who work in probation, the district attorney’s office, or the courts? These folks may have valuable insight into their agency’s policies and practices. If you are considering inviting system stakeholders to your group, it is important that you understand whether their values are aligned with yours and whether they are on board with your end goal. Young people who have lived experience in the legal system may not be comfortable with their presence in the coalition, therefore, the group should develop agreements for when and how to invite new members into the coalition.

- Finally, there are activists and organizers working on abolishing EM in the adult system who are doing fabulous work and may have insight that can support your efforts. Some of these organizations include Media Justice, Critical Resistance San Francisco, and community bail or bond funds.

Ultimately, in order to eliminate the practice of using ankle monitors, it is likely that you will need to propose alternative responses to youth behaviors that are developmentally appropriate, less harmful and more effective than use of ankle monitors. Are the right people at your table to develop solutions?

Developing Solutions⁴¹

The information you gather should be used to reduce the harm caused by electronic surveillance. Your efforts might focus from the beginning on investing in community alternatives; you may decide to implement limitations and safeguards on the use of electronic surveillance; or you may pursue both avenues at the same time.

Investing in Community to Improve Well-Being

1. Develop partnerships with community-based programs that youth can be referred to instead of placing them on the ankle monitor or in detention. Existing practices include after school programs, evening reporting centers, restorative justice programs, and therapy in the community such as multisystemic therapy (MST).
2. Document the benefits of community-based supports for youth and continue to build evidence for why this approach is qualitatively different than electronic monitoring. Documenting how community programs help youth gain the skills and knowledge they need to survive and thrive (including formal programs evaluations), show how this approach is more effective than electronic surveillance at building youth and community well-being.
3. Advocate for adequate and sustained funding for community-based programs that serve youth who come into police contact, are referred to probation, or who already have formal justice system involvement. Funding might be at the state or local levels, and involve passing new legislation, modifying existing legislation, or passing new bond or local tax measures.⁴²

Implementing Safeguards to Reduce Harm and Limit Use

1. Pressure probation departments and courts to:
 - a. Define their purpose for using the technology;
 - b. Individually tailor the ankle monitor related terms and conditions;
 - c. Ensure rules are simple and clear to follow;
 - d. Be transparent about how youth geolocation data is managed;

⁴¹ Recommendations in this section are partially drawn from the research of Kate Weisburd, Chaz Arnett, and Catherine Crump (referenced in the introduction), as well as from the partners who collaborated to write this toolkit.

⁴² A good example is the Juvenile Justice Crime Prevention Act (JJCPA), which was enacted in California in 2000 to support youth and limit their involvement in the legal system through local prevention work. Although substantial funds are available through the JJCPA – approximately \$160 million annually – unfortunately, the money now primarily pays probation salaries, despite the original intent of the bill. In the 2019-2020 legislative session, advocates are fighting to pass AB 1007 (Jones Sawyer) to require California counties to distribute at least 95 percent of their allotted JJCPA funds to non-law enforcement public agencies or to community-based organizations; ensure equitable community representation on the relevant decision-making bodies; and strengthen county reporting and evaluation processes regarding the funding. To learn more about this effort, contact California Assemblymember Jones-Sawyer's office or email policy@burnsinstitute.org.

- e. Limit information sharing of geolocation data.
- 2. Advocate that county governments and not the families of young people bear the costs of monitoring. Some states, such as California, have already passed legislation that prevent counties from charging fees to families for electronic monitoring, detention, and other such sanctions. Other states and counties can do the same. If counties bear the cost of ankle monitors, it may provide fiscal disincentive for use.
- 3. Categorically exclude certain groups of youth from being placed on ankle monitors, e.g., younger children, youth who are deemed incompetent (WIC 709), youth with cognitive disabilities and youth who do not have easy access to electricity. Defense counsel should challenge the use of ankle monitors for clients who fit into one of these groups.
- 4. Expand the group of youth who are released outright at detention intake. If the county uses a risk assessment instrument (RAI) to “score” youth’s risk levels at intake, are they following the recommendation to release “low risk” youth outright with no conditions? If not, why not?
- 5. According to Catherine Crump’s study in California, the majority of probation departments continue to use a “one size fits all” method, squandering any minor opportunity to use the technology in a more creative way and less restrictive manner. For instance, the continuous tracking capabilities of GPS make it possible to impose *more flexible geographic restrictions* tailored to each individual case. If the concern in an individual case is to keep a young person *away* from a specific area, GPS could be used to enforce an “exclusion zone” without unnecessarily restricting the young person to their home and excluding them from the benefits of participating in community activities.

Legislation at the State or County Level

Either of the above goals (investing more deeply in community well-being and reducing harm caused by electronic surveillance) can be aided by the passage of state legislation and/or changes to local policies. Examples are mentioned throughout this toolkit, but are highlighted again here:

- **State funding** such as California’s Juvenile Justice Crime Prevention Act (JJCPA), with proper oversight, can be sources of revenue to invest in community well-being rather than system responses such as probation, law enforcement and the courts. **Local tax and bond measures** can also fund youth development opportunities.
- **State legislation** can put statewide limits on the use of EM for youth (while carefully considering unintended harmful consequences such as increased use of incarceration, especially during the times of COVID).

- **Local resolutions or policies** can also limit the use of EM. For example, advocates can pressure the local board of supervisors to end EM contracts with private companies that provide EM.⁴³

Conclusion

The ideas listed here are not a comprehensive set of solutions. Perhaps there is a role for the arts, digital media, or storytelling communities as a means to raise awareness and pressure justice systems to change. Directly impacted individuals must continue to share personal stories and have a voice at the table. For instance, as mentioned in the research section, young people who are currently incarcerated may not want EM abolished completely, as it may be their best chance of getting out faster. Young people who are currently on EM or have been on EM in the past will also have important insights to share. While your broader advocacy coalition may have a goal of abolishing EM altogether, make space for these tough conversations to determine the best way to proceed, while considering and respecting the wishes of currently incarcerated people. Different people and places may develop different pathways to change.

If you are challenging the practice of using ankle monitors on youth, we would love to hear from you. What are you learning? What challenges have you had? What solutions have you come up with?

⁴³ In San Francisco, Critical Resistance is opposing the San Francisco Board of Supervisors move to renew the city's contract with private EM companies.

Appendix A: Terminology⁴⁴

Radio Frequency (RF): RF devices rely on battery-powered transmitters and home-based receivers, which allow the device to communicate that a person is home but cannot track the person's movements outside the range of the home for which it is programmed. RF requires the installation of a telephone line. It is primarily useful to enforce home confinement or house arrest, which is a serious restriction on freedom, but does not generate a continuous stream of data.

Global Positioning System (GPS): GPS devices rely on satellites and cell towers to track a person's movement continuously and provide real-time updates. The technology makes it possible to impose more flexible geographic restrictions (e.g. exclusion/inclusion zones instead of house arrest) which could help young people succeed more readily while still meeting the terms of their conditions on EM. However, GPS is still mostly used to enforce house arrest, and the continuous data logging can be used to further invade privacy.

Ankle Monitor/Ankle Bracelet: these terms refer to both RF and GPS technology and are used throughout this toolkit to imply a broad definition of the practice.

Electronic Monitoring (EM): This is a term we are using broadly (like ankle monitor and ankle bracelet) to refer to both RF and GP technology.

Home Supervision and Community Confinement Officers: These are typically officers in the probation department tasked with monitoring youth under home supervision, as well as monitoring compliance with the terms of EM/GPS. Often these officers are the ones that must give permission to youth to change schedule or leave the home.

Violations of Ankle Monitor Contract can be for "technical reasons" such as being somewhere you shouldn't be, not charging the device, not responding to your Probation Officer's phone calls, or not being at school when you're supposed to be. You can also violate other terms and conditions of probation not related to your ankle monitor. Technical violations can result in admission to secure detention, which is ironic since the point of the monitor is to keep youth out of secure detention.

Pre-Adjudication: this means before a judge makes a ruling in a case in juvenile court. It's the equivalent of pre-trial in adult court. In juvenile court, a case is "adjudicated" and then a "disposition" (e.g. sentence) is given. In California, probation often has the authority to place a youth on an ankle monitor pre-adjudication. The judge could also place a youth on ankle monitor pre-adjudication.

Post-Adjudication: this means after a judge makes a ruling in a juvenile court case. (See above). In California, judges make the decision to place youth on ankle monitor post-adjudication.

Alternative to Detention (ATD): an ATD is a program or form of supervision that youth are placed under instead of being locked in a secure detention facility. Ideally, ATDs are community-based programs that help meet youths' needs and provide opportunities to build on youths' strengths. However, ankle monitors and home supervision are also considered to be ATDs.

Net Widening: expanding the justice system's control over young people who would otherwise have received less burdensome terms of release.

Appendix B: Decision Point Analysis Framework

	Decision Maker Who are the decision makers?	Outcomes What are the possible outcomes at this point?	Policy Is there a formal policy in place guiding what should happen?	Practice What happens in practice? Does practice follow policy?	Quantitative Data What data tells you whether practice and policy are aligned?
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⁴⁴ The definitions of net widening, RF and GPS, as well as notes about their pros/cons (privacy considerations, inclusion/exclusion zones) were taken from Catherine Crump, *Tracking the Trackers: An Examination of Electronic Monitoring of Youth in Practice*, UC Davis Law Review, and slightly modified.

A: Physical Referral to Juvenile Hall for possible admission					
B: Detention Hearing					
C: Adjudication Hearing (Trial)					
D: Disposition Hearing (Sentencing)					
E: Progress Report or Probation Violation Hearing					

Appendix C: Sample Data Tables

BI's work includes deconstructing how the administration of justice intersects with structural racism, and results in consistently poorer life outcomes for people of color. Therefore, we recommend that all data be disaggregated by the relevant racial and ethnic groups in your jurisdiction. This allows you to understand the impact of practices on youth of color.

Data can also be disaggregated by other variables of interest such as youth's gender identity, age, and home zip code; probation unit and recommendation; and judge or courtroom. For instance, if you want to look at data by gender identity *and* race/ethnicity, you would create two or more tables in place of each of the sample tables below. The parameters of data to populate the table would change to (for example) "All girls placed on each type of ankle monitor during time period."

Data can be requested for different time periods, depending on your jurisdiction's size and ability to provide the information. For example, you may ask for the latest full calendar year and/or monthly or quarterly reports. If your jurisdiction has the capacity to run reports easily for different time periods, it can be helpful to go back a number

of years to look at monthly, quarterly or annual trends. Jurisdictions with small populations or just a few youth on ankle monitor may consider using annual data.

Above each suggested table in this appendix is the key question that can be answered when the table is populated as well as the parameters of data that should be used when completing the table.

In the following tables, we abbreviated the racial/ethnic groups in the table columns as follows:

W=White

B= Black or African American

L=Latino

API= Asian or Pacific Islander

NA= Native American

O=Other

T=Total

Your jurisdiction should choose relevant racial and ethnic categories based on your local data collection practices and ethnic composition of your youth population. For instance, “API” may be broken down into specific groups such as Vietnamese and Filipino.

Table 1: How many youth are placed on electronic monitoring and what type of surveillance are they under?

Parameters: All youth placed on each type of ankle monitor during time period.

	W	B	L	API	NA	O	T
Pre-adjudication EM							
Post-adjudication EM							

Table 2: How long do youth remain on each type of ankle monitor?

Parameters: All youth who are taken off of ankle monitor during the time period.

	W	B	L	API	NA	O	T
Pre-adjudication EM							
# of youth taken off of EM							
Average (days)							
Median (days)							
Post-adjudication EM							
# of youth taken off of EM							
Average (days)							
Median (days)							

Table 3: Are detention, ankle monitor and release decisions made in alignment with RAI score?

Parameters: All youth screen using the RAI during time period.

	W	B	L	API	NA	O	T
Detain							

High							
Medium							
Low							
Total							
Release on EM							
High							
Medium							
Low							
Total							
Release with CBO Support							
High							
Medium							
Low							
Total							
Release Outright							
High							
Medium							
Low							
Total							

Table 4: Do the outcome of detention hearings differ by judge/courtroom?

Parameters: All youth with detention hearings during time period.

	W	B	L	API	NA	O	T
Judge 1							
Detain							
Release on EM							
Release with CBO Support							
Release Outright							
Judge 2							
Detain							
Release on EM							
Release with CBO Support							
Release Outright							

Table 5: Do the outcomes of detention hearings differ based on probation's recommendation? Do judges follow probation's recommendation?

Parameters: All youth with detention hearings during time period, for which there is a probation recommendation made.

	W	B	L	API	NA	O	T
Probation recommends release							
Judge releases							
Judge places on EM							
Judge detains							
Probation recommends EM							
Judge releases							
Judge places on EM							
Judge detains							
Probation recommends detain							
Judge releases							
Judge places on EM							
Judge detains							

Table 6: What are the “success” and “failure” rates?

Parameters: All youth who are taken off of ankle monitor during time period.

	W	B	L	API	NA	O	T
Pre-adjudication EM							
Successful exit from EM							
Failed exit from EM							
Post-adjudication EM							
Successful exit from EM							
Failed exit from EM							

Table 7: What are the reasons for “failure” on the ankle monitor?

Parameters: All youth who are taken off of ankle monitor during time period and considered “failed”.

	W	B	L	API	NA	O	T
Pre-adjudication EM failures							
Reason one							
Reason two							
<i>Add reasons as necessary</i>							
Post-adjudication EM failures							
Reason one							

Reason two							
<i>Add reasons as necessary</i>							

Table 8: What are the outcomes of failure on the ankle monitor?

Parameters: All youth who are taken off of ankle monitor during time period and considered “failed”

	W	B	L	API	NA	O	T
Pre-adj. EM failure outcomes							
Taken off EM							
Extended time on EM							
Detention							
Change in probation status							
<i>Add outcomes as necessary</i>							
Post-adj. EM failure outcomes							
Taken off EM							
Extended time on EM							
Detention							
Change in probation status							
<i>Add outcomes as necessary</i>							

Appendix D: Interview Questions for Youth about Being on Ankle Monitor

The following list of interview questions were co-constructed by Angela Laureano and James Kilgore to inform Angela's research, with minor modifications by the Burns Institute for this toolkit.

1. Do you mind being quoted?
2. How long were you on the monitor?
3. What were you on it for? (not about their crime, but a choice to say probation parole etc.)
4. What were the conditions that you had, what did you have to do to get to move?
5. Were you (radar frequency) curfew or GPS? Schedule, if their PO was ever really tracking them?
6. Did you or your family have to pay for it? If so how much?
7. Did you ever have technical problems with the device? (forget to plug them in)
8. Was it a 2 piece device or landline required? What type?
9. What were some issues you faced being on this monitor?
10. How did it impact your family, or who you lived with?
11. How did it impact any other people in your life?
12. If parents, how did it impact your ability to parent your children?
13. If you ever asked for movement, were you refused? What were you trying to do? And why was your request refused?
14. Were you free to travel? Bounds?
15. Did you have any exclusion zones?
16. How do you feel being on the monitor?
17. Do you think this is a form of incarceration?
18. Did you have any trouble finding employment?
19. Did you feel stigmatized in any way?
20. How did you deal with the issue of clothes?
21. Did it get in the way of any other day to day activities such as showering?
22. Did it cause you physical discomfort? Irritation?
23. If you could have 5 minutes alone with heads of juvenile departments, what would you tell them about EM?
24. Do you have any documentation on the monitor? What were you told about the monitor?
25. What do you think this device is going to look like in 10 years?

Appendix E: Model Ankle Monitor Rules

This is an example of how rules could be simplified so they are much easier for youth to understand.

- I must wear an electronic monitor.
- This monitor means that probation officers can know where I am at all times.
- I also have to follow any other rules of probation that the court ordered.
- I cannot take the monitor off.
- I must:
 - Charge the monitor every day for at least two hours.
 - Tell my probation officer if I move, change my phone number, or change schools.
 - Respond right away to calls from the electronic monitoring officer or my probation officer.
 - Respond to any requirement that I get a new monitor if mine breaks.

(Select with a check which of the following apply)

___ I cannot leave the county unless my probation officer first says it is okay.

___ I cannot leave the city of ___ unless my probation officer first says it is okay.

___ I must be home by ___ time each night unless my probation officer says it is okay to stay out later.

___ I have to stay at home unless I am at school, an extracurricular activity, work or job training, a counseling or medical appointment, or a religious service. It is also okay for me to go wherever I want as long as an adult family member is with me. Otherwise, I have to ask a probation officer for permission first.

The strange and fascinating history of the ankle monitor

Ankle monitor related research dates back decades to research conducted by the army during World War I. In the 1960s, twin brothers at Harvard, Robert and Kirk Gable designed the first prototypes using old military equipment. Their electronic monitoring belts were radio devices that tracked the whereabouts of youth under the supervision of the courts.



The Gable brothers, who studied under Harvard psychologist and behaviorist, B.F. Skinner, intended to use the belts to reinforce positive behavior. If youth were where they were supposed to be, they would be rewarded. The devices were intended to encourage youth under supervision to show up to school, jobs, treatments sessions and the like. However, the belts didn't gain immediate popularity.

It was not until the early 1980s that New Mexico judge, Jack Love, expanded the use of the

electronic monitoring devices into the criminal justice system. In 1977, after seeing a Spider-Man comic strip where the Kingpin used a bracelet to track Spiderman's location, Love began imagining how the technology might allow the release of some prisoners from overcrowded jails.

It took several years and a number of failed attempts, but finally Love convinced a salesman from an electronics company, Michael Goss, to develop and market an electronic tracking device that fit around the ankle. Love first tested the device out himself by wearing it for three weeks, then sentenced four defendants to wear the monitors instead of jail time or fines.

The Gable brothers and Judge Jack Love intended for the monitoring devices to improve the conditions under which people experienced the criminal and youth justice systems.

However, in the intervening four decades, the technology has been used primarily in a punitive manner, to catch "offenders" breaking the rules rather than help people implement positive behavioral changes. Its use has also exploded and the technology continues to evolve, each new development promising better outcomes.

According to the [Challenging E-Carceration Project](#), there now may be up to 200,000 people on various forms of EM over the course of a year. As the movement to end mass incarceration has gained strength, a few large companies, including private prison companies, continue to invest heavily in EM technology, presumably hoping to recapture revenue lost from traditional incarceration through cornering the market on e-carceration.

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